

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Thurmond Guess Sr.,

Plaintiff,

vs.

Leonardo Brown As Richland County
Administrator; Darrell Jackson, Sr.; Rose
Ann English; Alfred T. Guess; and Marjorie
Guess,

Defendants.

Civil Action No. 3:23-2957-CMC

ORDER

This matter is before the court on review of Plaintiffs' *pro se* Amended Complaint. ECF No. 25. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report").

Previously, the Magistrate Judge entered a Report recommending Plaintiff's original Complaint be summarily dismissed. ECF No. 12. Plaintiff objected, insisting he could amend to allege a federal claim. ECF No. 15. Accordingly, the court declined to adopt the Report and allowed Plaintiff an opportunity to amend. ECF No. 17. Plaintiff filed his Amended Complaint. ECF No. 25.¹

¹ The Amended Complaint was submitted September 8, 2023. However, it was inadvertently not filed on the docket at that time. This court therefore dismissed the case, believing Plaintiff did not wish to pursue an Amended Complaint. ECF No. 19. Plaintiff then filed a motion for reconsideration, attaching his clocked-in copy of the Amended Complaint. ECF No. 22. This court accordingly reopened the case and directed the Amended Complaint be filed on the docket as of the day it was clocked-in. ECF No. 24. This Report follows.

On November 8, 2023, the Magistrate Judge issued a second Report recommending the Amended Complaint be summarily dismissed without prejudice and without issuance and service of process. ECF No. 28. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections on November 13, 2023. ECF No. 31.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

The Report recommends dismissal of the criminal conspiracy claim because it was brought under a criminal statute; of the § 1983 constitutional claims against the private citizens (all Defendants except Brown); and against Brown because the easement was filed before Brown was County Administrator and Plaintiff’s allegations regarding a meeting in 2022 were insufficient to show Brown violated his rights. ECF No. 28.

In his objections, Plaintiff alleges he has sufficiently pleaded the elements of an action under 42 U.S.C. § 1983 and a *Monell* claim. ECF No. 31 at 2. He also contends “some of these laws are criminal but still civil action can be filed.” *Id.* Plaintiff apparently warned Brown he was “acting under color of state law” and violating the constitution, but Brown stated in a letter he was not going to give the property back. *Id.* Plaintiff attaches a letter signed by Brown noting the easement Plaintiff disputes has been in effect for over 30 years, and the time for contesting the signatures was within two years of execution. ECF No. 31-1.

The court agrees with the Magistrate Judge the Amended Complaint does not set forth a viable federal claim under § 1983 or the other criminal statutes under which Plaintiff attempts to bring claims. Plaintiff’s objections are overruled for the reasons stated in the Report: he may not bring a civil action under a criminal statute, Defendants other than Brown are not state actors, and he fails to state a claim against Brown under § 1983. Claims under *Monell* are restricted to municipalities and not a single actor. After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff’s objections, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff’s Amended Complaint is hereby summarily dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
November 16, 2023